

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STICHTING PENSIOENFONDS ABP,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER, EDWARD
M. SCOLNICK, DAVID W. ANSTICE, and
PETER S. KIM

Defendants.

CASE NO. 2:05-CV-05060-SRC-MAS

NORGES BANK,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04021-SRC-MAS

[Caption continued on following page]

DEKA INVESTMENT GmbH, DEKA
INTERNATIONAL S.A. LUXEMBURG, DEKA
INTERNATIONAL (IRELAND) LIMITED,
DEKA FUNDMASTER
INVESTMENTGESELLSCHAFT MBH,
INTERNATIONAL FUND MANAGEMENT
S.A., MUNICH ERGO ASSET MANAGEMENT
GmbH, INTERNATIONALE FONDS SERVICE
AG, INTERNATIONALE
KAPITALANLAGEGESELLSCHAFT MBH,
METZLER INVESTMENT GmbH, and
FRANKFURTER SERVICE
KAPITALANLAGEGESELLSCHAFT mbH,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04022-SRC-MAS

[Caption continued on following page]

UNION ASSET MANAGEMENT HOLDING
AG, OPPENHEIM PRAMERICA ASSET
MANAGEMENT S.à.r.l., ERSTE-SPARINVEST
KAPITALANLAGEGESELLSCHAFT m.b.H.,
and OPPENHEIM
KAPITALANLAGEGESELLSCHAFT m.b.H.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04023-SRC-MAS

[Caption continued on following page]

AFA LIVFÖRSÄKRINGSAKTIEBOLAG, AFA
TRYGGHETSFÖRSÄKRINGSAKTIEBOLAG,
AFA SJUKFÖRSÄKRINGSAKTIEBOLAG on
its own behalf and on behalf of
KOLLEKTIVAVTALSSTIFTELSEN
TRYGGHETFONDEN TSL, ALECTA
PENSIONS FÖRSÄKRING ÖMSESIDIGT,
SJUNDE AP-FONDEN, DANSKE INVEST
ADMINISTRATION A/S, SWEDBANK ROBUR
AB, AMF PENSION FONDFÖRVALTNING
AB, ARBETSMARKNADSFÖRSÄKRINGAR
PENSIONS FÖRSÄKRINGSAKTIEBOLAG,
SKANDINAVISKA ENSKILDA BANKEN AB
on its own behalf and on behalf of SEB
INVESTMENT MANAGEMENT AB, SEB
ASSET MANAGEMENT S.A. and GAMLA
LIVFÖRSÄKRINGSAKTIEBOLAGET SEB
TrYGG LIV,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04024-SRC-MAS

[Caption continued on following page]

ALLIANZ GLOBAL INVESTORS
KAPITALANLAGEGESELLSCHAFT MbH;
ALLIANZ GLOBAL INVESTORS
LUXEMBOURG S.A.; and ALLIANZ GLOBAL
INVESTORS IRELAND LIMITED,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04451-SRC-MAS

DWS INVESTMENT GmbH, PIONEER
INVESTMENTS
KAPITALANLAGEGESELLSCHAFT mbH,
DEUTSCHE ASSET MANAGEMENT
INVESTMENTGESELLSCHAFT mbH,
WIENER STÄDTISCHE VERSICHERUNG AG
VIENNA INSURANCE GROUP,
LIECHTENSTEINISCHE LANDESBANK
AKTIENGESELLSCHAFT, DWS (AUSTRIA)
INVESTMENTGESELLSCHAFT mbH,
LANDESBANK BERLIN INVESTMENT GmbH,
and LRI LANDESBANK RHEINLAND-PFALZ
INTERNATIONAL S.A.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04546-SRC-MAS

[Caption continued on following page]

KBC ASSET MANAGEMENT NV, PIONEER
INVESTMENT MANAGEMENT LTD.,
PIONEER INVESTMENT MANAGEMENT
SGRpa, and PIONEER INVESTMENTS
AUSTRIA GmbH,

Plaintiffs,

CASE NO. 2:11-CV-06259-SRC-MAS

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER, EDWARD
M. SCOLNICK, DAVID W. ANSTICE, and
PETER S. KIM

Defendants.

STIPULATION AND [PROPOSED] ORDER

WHEREAS, pursuant to the Court's Order dated May 5, 2005, all pending and subsequently-filed Vioxx-related securities actions, including the above-captioned individual actions (the "Individual Actions"), are "consolidated for all purposes" into *In re Merck & Co., Inc. Securities, Derivative & ERISA Litigation*, MDL No. 1658 (the "MDL");

WHEREAS, the MDL includes the Individual Actions, as well as a consolidated securities action, No. 2:05-CV-02367-SRC-MAS (the "Consolidated Securities Action");

WHEREAS, the complaints in the Individual Actions involve claims, allegations, and parties that substantially overlap with the claims, allegations, and parties in the Consolidated Securities Action;

WHEREAS, on December 3, 2008, the parties to three of the Individual Actions (*Stichting Pensioenfond ABP v. Merck & Co., Inc.*, No. 2:05-CV-05060-SRC-MAS; *AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc.*, No. 07-cv-04024-SRC-

MAS; and *Allianz Global Investors Kapitalanlagegesellschaft MbH, et al. v. Merck & Co., Inc.*, No. 07-cv-04451-SRC-MAS) entered into a stipulation, which this Court “so ordered,” setting the deadline for Plaintiffs to file amended complaints no later than forty-five (45) days from the date on which this Court resolved the motions to dismiss the Fifth Amended Corrected and Consolidated Securities Complaint (the “Fifth Amended Complaint”) in the Consolidated Securities Action;

WHEREAS, on March 10, 2009, Plaintiffs in the Consolidated Securities Action filed the Fifth Amended Complaint;

WHEREAS, Defendant Merck & Co., Inc. (“Merck”) filed a motion to dismiss the Fifth Amended Complaint in the Consolidated Securities Action on behalf of Merck and all individual defendants other than Defendant Scolnick (the “Merck Individual Defendants” and, together with Merck, the “Merck Defendants”);

WHEREAS, Defendant Scolnick filed a separate motion to dismiss the Fifth Amended Complaint in the Consolidated Securities Action;

WHEREAS, on August 8, 2011, this Court issued a single opinion (the “August 8 Opinion”) on the motions to dismiss the Fifth Amended Complaint in the Consolidated Securities Action filed by the Merck Defendants and Defendant Scolnick (together, the “Defendants”);

WHEREAS, in the August 8 Opinion, this Court granted in part Defendants’ motions to dismiss the Fifth Amended Complaint in the Consolidated Securities Action as follows:

(1) the Court dismissed the claims under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) to the extent those claims were asserted against Defendants Gilmartin, Lewent, Frazier, Anstice, and Kim;

(2) the Court dismissed the claims under Section 10(b) of the Exchange Act to the extent those claims were based on alleged misrepresentations made by Merck and/or Defendant Raymond Gilmartin on September 30, 2004;

(3) the Court dismissed the claims under Section 10(b) of the Exchange Act to the extent that those claims alleged losses occurring after September 30, 2004;

(4) the Court dismissed the claims under Section 10(b) of the Exchange Act as asserted against Defendant Scolnick to the extent they are predicated on statements that are not alleged to have been made by and attributed to Defendant Scolnick;

(5) the Court dismissed the claims under Section 10(b) of the Exchange Act as asserted against Defendant Scolnick to the extent those claims were based on Merck's 2000 Annual Report, Merck's 2001 Form 10-K, and/or Merck's 2002 Registration Statement; and

(6) the Court dismissed the claim against Defendant Scolnick under Section 20(a) of the Exchange Act to the extent the claim was based on alleged misrepresentations post-dating Defendant Scolnick's retirement from Merck on December 31, 2002;

WHEREAS, in the August 8 Opinion, this Court otherwise denied Defendants' motions to dismiss the Fifth Amended Complaint in all other respects;

WHEREAS, Plaintiffs' counsel in the first seven above-captioned actions informed Defendants that Plaintiffs intended to file amended complaints to conform their allegations to the August 8 Opinion with respect to certain overlapping claims and allegations in the Consolidated Securities Action;

WHEREAS, Plaintiffs in the first seven above-captioned actions filed amended complaints on October 21, 2011, and Plaintiffs in the above-captioned action entitled *KBC Asset Management NV v. Merck & Co., Inc.*, No. 2:11-cv-06259-SRC-MAS filed a complaint on October 26, 2011, which was consolidated with the first seven above-captioned actions (collectively, the “Individual Complaints”);

WHEREAS, the Individual Complaints are substantially identical to one another;

WHEREAS, the parties, claims, and allegations in the Individual Complaints overlap substantially with the parties, claims, and allegations in the Consolidated Securities Action Fifth Amended Complaint;

WHEREAS, Defendants in *Stichting Pensioenfonds ABP v. Merck & Co., Inc.*, No. 2:05-cv-05060-SRC-MAS (the “ABP Action”) will file motions to dismiss the ABP Second Amended Complaint on January 20, 2012;

WHEREAS, pursuant to this Court’s Order on October 6, 2011, Defendants’ time to move or otherwise respond to the remaining Individual Actions was stayed until forty-five (45) days after this Court’s decision on the motions to dismiss in the ABP Action;

WHEREAS, the Parties to the Individual Actions do not wish to re-brief arguments and issues already considered and decided by this Court in the Consolidated Securities Action, but wish nonetheless to preserve any such arguments and issues for appeal; and

WHEREAS, the Court has directed the Parties to the Individual Actions to enter into a stipulation providing that the Court’s rulings in the August 8 Opinion apply to the Individual Actions to the same extent as to the Consolidated Securities Action;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel, that:

1. The Parties to the Individual Actions agree that any arguments raised by Defendants and/or Plaintiffs in the Consolidated Securities Action in connection with any briefing (including supplemental letter briefs) on Defendants' motions to dismiss the Fifth Amended Complaint shall not be re-briefed in the Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and in opposition to such motions in the Individual Actions;

2. The Parties to the Individual Actions agree that the following claims, dismissed in the August 8 Opinion, shall be deemed dismissed to the same extent in the Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and in opposition to such motions in the Individual Actions:

- a. Any claims under Section 10(b) of the Exchange Act against Defendants Gilmartin, Lewent, Frazier, Anstice, and Kim;
- b. Any claims under Section 10(b) of the Exchange Act based on alleged misrepresentations made by Merck and/or Defendant Raymond Gilmartin on September 30, 2004;
- c. Any claims under Section 10(b) of the Exchange Act based on alleged losses occurring after September 30, 2004;
- d. Any claims under Section 10(b) of the Exchange Act against Defendant Scolnick to the extent those claims are based on

purported misrepresentations not alleged to have been made by and attributed to Defendant Scolnick;

- e. Any claims under Section 10(b) of the Exchange Act against Defendant Scolnick based on Merck's 2000 Annual Report, Merck's 2001 Form 10-K, and/or Merck's 2002 Registration Statement;
- f. Any claims under Section 20(a) of the Exchange Act against Defendant Scolnick based on misrepresentations post-dating Defendant Scolnick's retirement from Merck on December 31, 2002;

3. Nothing in this Stipulation shall preclude the Parties in the Individual Actions from advancing, in connection with any motion to dismiss, any argument that was not raised or decided in the Consolidated Securities Action.

DATED: January 17, 2012

AGREED TO BY:

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DATED: January 17, 2012

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behalf and on behalf of SEB Investment

Management AB, SEB Asset Management

S.A., and Gamla Livförsäkringsaktiebolaget

SEB Trygg Liv; Allianz Global Investors

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DATED: January 17, 2012

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DATED: January 17, 2012

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SO ORDERED: _____, 2012

Hon. Stanley R. Chesler
United States District Judge